

MER.13378

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

DANIEL BOUKNIGHT

v.

**MICHAEL D. HANLEY and MERCER
TRANSPORTATION CO.**

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CIVIL ACTION NO.:_____

**DEFENDANTS MICHAEL D. HANLEY AND MERCER TRANSPORTATION CO.'S
NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, **MICHAEL D. HANLEY AND MERCER TRANSPORTATION CO.**

Defendants in the above matter, and file this their Notice of Removal under 28 U.S.C. §§ 1441 and 1332(a).

**I.
BACKGROUND**

1. Plaintiff sued the Defendants in the 102nd District Court, Red River County, Texas alleging serious injuries from an automobile collision.

2. Defendant **MERCER TRANSPORTATION CO.**, (hereinafter referred to as “Defendant Mercer”) was served on or about January 29, 2021. This Defendant has filed this Notice of Removal within the time period required. 28 U.S.C. §1446(b).

3. Defendant **MICHAEL D. HANLEY**, (hereinafter referred to as “Defendant Hanley”) was served on or about February 3, 2021. This Defendant has filed this Notice of Removal within the time period required. 28 U.S.C. §1446(b).

4. Plaintiff **DANIEL BOUKNIGHT** is a resident of Texas and domiciled in Bowie County, Texas.

5. Defendant **MERCER TRANSPORTATION CO.** is corporation incorporated under the laws of the State of Kentucky with its corporate office and principal place of business in Kentucky.

6. Defendant **MICHAEL D. HANLEY** is a resident of Indiana and domiciled in Newton County, Indiana.

7. Plaintiff's Original Petition, filed contemporaneously herewith, indicates that Plaintiff intends to conduct discovery according to Discovery Level 2.

II. BASIS FOR REMOVAL

8. Removal is proper under 28 U.S.C. § 1332(a) because Plaintiff's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is removable to this Court pursuant to the provisions of 28 U.S.C. §1441(b) because Plaintiff is a citizen of the State of Texas; Defendant Michael D. Hanley is a citizen of the State of Indiana, and Defendant Mercer Transportation Co. is a Kentucky corporation with its principal place of business in Kentucky.

9. For diversity purposes, a person is considered a citizen of the state where that person is domiciled. Additionally, for diversity purposes, a corporation is a citizen of both the state in which it was incorporated and the state in which it has its principal place of business. 28 U.S.C. §1332(c)(1). For Defendant Mercer Transportation Co., this test implicates the State of Kentucky.

10. Because the Plaintiff and the Defendants Michael D. Hanley and Mercer Transportation Co. to this suit do not share citizenship in any state, removal is proper on diversity grounds.

11. The Defendants are now, and were at the time the removed action was commenced, diverse in citizenship from the Plaintiff. 28 U.S.C. § 1332. Accordingly, because the notice of

removal was filed within thirty days after the receipt of a copy of the initial pleading setting forth the claim for relief this removal is proper and timely under 28 U.S.C. §1446(b).

12. The amount in controversy in this action, exclusive of interest and costs, is over Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). *See* Plaintiff's Original Petition, Paragraph IV. Plaintiff alleges damages that "exceeds the minimum jurisdictional limits" of the state District Court. *See* Plaintiff's Original Petition, Paragraph III.

13. The United States District Court for the Eastern District of Texas, Texarkana Division, embraces Red River County, Texas, the place where the state court action was filed, and is pending in the 102nd Judicial District Court. The address for the 102nd Judicial District Court is 710 James Bowie Drive, New Boston, Texas 75575; (903) 590-1634. This statement is not meant as a waiver of any argument that venue is improper in the location in which the state court action was filed, but merely demonstrates the propriety of removing the action to this federal judicial district.

14. All pleadings, process, orders, served upon Defendants in the state court action are attached to this Notice as Exhibit "A" as required by 28 U.S.C. § 1446(a). No other motions are pending before the state court.

15. Defendants will promptly file a copy of this Notice with the clerk of the state court in which the action is pending.

III. REQUEST FOR JURY TRIAL

16. Defendants hereby demand a trial by jury in accordance with the provisions of FED. R. Civ. P. 38.

WHEREFORE, PREMISES CONSIDERED, Defendants Michael D. Hanley and Mercer Transportation Co., respectfully request that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Eastern District of

Texas, Texarkana Division, and for such other and further relief to which they may show themselves to be justly entitled in equity or law.

Respectfully submitted,

FEE, SMITH, SHARP & VITULLO, L.L.P

/s/ MICHAEL P. SHARP

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2021 I electronically filed the foregoing document with the clerk of the court for the U.S. District Court for the Eastern District of Texas - Texarkana Division, using the electronic case filing system of the Court. The electronic filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

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/S/ MICHAEL P. SHARP

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